

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following groups:

Group I: Claim 6, drawn to a hair cosmetic composition comprising A-C,
wherein B is a cationic surfactant; and

Group II: Claim 7, drawn to a hair cosmetic composition comprising A-C,
wherein B is a tertiary amine.

Applicants hereby provisionally elect Group I, Claim 6, drawn to a hair cosmetic composition comprising A-C, wherein B is a cationic surfactant with traverse on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness between the identified groups. Also, it has not been shown that a burden exists in searching the claims of the two groups.

Moreover, the M.P.E.P. at § 803 states as follows:

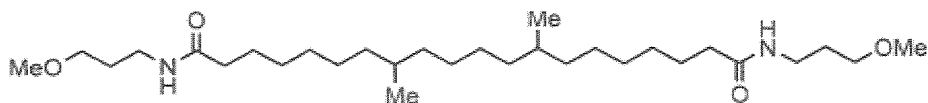
“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants respectfully submit that a search of all of the claims would not impose a serious burden on the Office.

As regards the three Elections of Species, Applicants provisionally elect, as a cationic surfactant, stearyl trimethylammonium chloride, which is specifically shown in Examples 1 to 4 and among the surfactants recited in Claim 6.

As a tertiary amine, Applicants provisionally elect N,N-dimethyloctadecyloxypropylamine which is recited in Claim 7.

As an amphipathic amide lipid, Applicants provisionally elect amphipathic amide lipid A which is shown on page 28 of the specification as has the following structural formula:



Applicants traverse these elections of species on the grounds that cationic surfactants, tertiary amines and amphipathic amide lipids are claimed and/or disclosed in this application as members of "Markush" groups which is an acceptable manner of expressing together operable substances which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics. All members of each Markush grouping need only possess at least one property in common which is mainly responsible for the function in the claimed relationship. The common characteristics and the utility in a generic sense suffices.

Applicants make no statement regarding the patentable distinction of the species, but note that for the restriction to be proper there must be patentable differences.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election/Restriction Requirement. Withdrawal of the Election/Restriction Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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